

Plaintiff has moved for a preliminary injunction. For the reasons that follow, Plaintiff's motion is DENIED.

Order Denying Applications for Preliminary Injunctive Relief
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1 “A preliminary injunction is ‘an extraordinary and drastic remedy, one that should not be
2 granted unless the movant, *by a clear showing*, carries the burden of persuasion.’” *Lopez v.*
3 *Brewer, et al.*, 680 F.3d 1068, 1072 (9th Cir. 2012) (citation omitted) (emphasis in original). “A
4 plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits,
5 that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of
6 equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural*
7 *Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008).

8 As an initial matter, in Plaintiff’s motion, he requests the Court to enjoin Chief of the
9 California Prison Health Care Services, J. Walker; Secretary of the California Department of
10 Corrections, Matthew Cate; the CDCR and its “officers, agents, employees, successors,
11 attorneys, and all those in active concert or participation with them” from interfering with or
12 denying Plaintiff from receiving his pain management treatment of 30 milligrams (“mg”) of
13 morphine sulphate four times a day and 800 mg of ibuprofen three times a day. Plaintiff has
14 failed to make a “clear showing,” *id.* at 22, that the prison officials who are interfering with or
15 denying Plaintiff from his morphine and ibuprofen “are in active concert or participation” with,
16 or are subordinates of, Defendants. Fed. R. Civ. P. 65(d). Plaintiff has failed to specifically
17 identify the prison officials responsible for the interference with or denial of his morphine and
18 ibuprofen, nor has he identified the officials authorized to order the morphine and ibuprofen.
19 Absent such a showing, the Court may not grant Plaintiff’s motion. *See In re Estate of*
20 *Ferdinand Marcos*, 94 F.3d 539, 545 (9th Cir. 1996) (recognizing that a court can only enjoin
21 those it has personal jurisdiction over, and acknowledging that a court should not issue an
22 injunction that it cannot enforce).

23 Further, even if Plaintiff had made a clear showing that the prison officials who interfered
24 with or denied Plaintiff’s morphine and ibuprofen were in active concert with Defendants,
25 Plaintiff has failed to failed to show a likelihood of success on the merits or that he is likely to
26 suffer irreparable harm in the absence of preliminary relief. *See Winter*, 555 U.S. at 20. In
27 order to succeed on a claim of deliberate indifference to serious medical needs, a plaintiff must
28 demonstrate the seriousness of his medical need, and the nature of the defendants’ response to

1 that need. *See McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other*
2 *grounds, WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc).
3 Even assuming that Plaintiff has a serious medical need, the sparse evidence he has submitted in
4 support of his motion for preliminary injunction falls far short of showing a likelihood of success
5 on the merits. At most, the evidence submitted by Plaintiff suggests that an unspecified prison
6 official accused Plaintiff of “cheeking” or “hoarding” medication, and because of this suspected
7 cheeking, on July 6, 2010, Plaintiff’s narcotics were discontinued. (Mot. for Prelim. Injunc., Ex.
8 O, Dr. Espinoza-Marcus’ medical notes.) On February 17, 2011, Dr. Gamboa also observed that
9 Plaintiff had a “history of narcotic diversion.” (*Id.*, Ex. B.) Nonetheless, Dr. Gamboa started
10 Plaintiff on 15 mg of morphine sulfate. (*Id.*) At that time, Plaintiff was still receiving 600 mg of
11 gabapentin two times a day, and 600 mg tabs of ibuprofen three times a day. (*Id.*) Plaintiff’s
12 exhibits show that he had a prescription for morphine from February 2011 through at least
13 September 15, 2011. (*Id.*, Ex. D.) “A difference of opinion between a prisoner-patient and
14 prison medical authorities regarding treatment does not give rise to a § 1983 claim.” *Franklin v.*
15 *Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981). In order to prevail on a claim involving choices
16 between alternative courses of treatment, a plaintiff must show that the course of treatment the
17 doctors chose was medically unacceptable under the circumstances and that he or she chose this
18 course in conscious disregard of an excessive risk to plaintiff’s health. *Toguchi v. Chung*, 391
19 F.3d 1051, 1058 (9th Cir. 2004). At this time, a review of the evidence submitted does not show
20 that Plaintiff is likely to succeed on the merits. The Court recognizes that it is Plaintiff’s
21 position that this is not merely a difference of opinion between him and his doctor, or between
22 medical providers, but Plaintiff’s mere opinion regarding the action is not sufficient to issue a
23 preliminary injunction. The question must be decided based upon the evidence before the Court.


24 In addition, in his motion, Plaintiff states that he receives constant interruptions to his
25 prescribed pain medication which cause unbearable pain. Also, Plaintiff claims that his medical
26 conditions are degenerative in nature, so the level of pain he experiences only gets worse without
27 adequate medical devices and pain control. Plaintiff alleges that there is a substantial risk of
28 harm because, due to the interruptions to his pain medications, Plaintiff’s bones have

1 deteriorated more, making it more likely that he will need surgery. Plaintiff's allegations appear
2 to be a "[s]peculative injury [that] does not constitute irreparable injury sufficient to warrant
3 granting a preliminary injunction." *Caribbean Marine Servs. Co.*, 844 F.2d 668, 674 (9th Cir.
4 1988). Based on the above, Plaintiff has not sufficiently satisfied the *Winter* factors to warrant
5 the extraordinary remedy of an injunction. Accordingly, Plaintiff's motion for a preliminary
6 injunction is DENIED without prejudice.

7 To the extent Plaintiff wishes to amend his complaint to add more defendants, that
8 request is DENIED. (Doc. No. 23 at 8.) Plaintiff has already been given the opportunity plus
9 two extensions of time in which to file an amended complaint, but has failed to comply with the
10 Court's deadlines. Moreover, Plaintiff simply lists Defendants that he wishes to join, but fails to
11 proffer any evidence that any of them proximately caused any alleged violation of Plaintiff's
12 constitutional rights. *See Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988).

13 IT IS SO ORDERED.

14 DATED: 10/25/12


LUCY H. KOH
United States District Judge